A.F.R. (13)

HIGH COURT OF CHHATTISGARH AT BILASPUR

(Division Bench)

CORAM : Hon'ble Shri Vijay Kumar Shrivastava, & Hon'ble Shri Dhirendra Mishra, JJ.

Criminal Appeal No.3033/1999

Appellant : Ram, s/o. Lakhna,
r/o. village Obari,
PS: Balrampur,
Dist. Sarguja, C.G.

Versus

Respondent : State of Chhattisgarh

JUDGMENT FOR CONSIDERATION

Sd/-
JUDGE

13/4/2006

I agree

HON'BLE SHRI JUSTICE DHIRENDRA MISHRA

Sd/-
Dhirendra Mishra
Judge

POST FOR 13/4/2006

Sd/-
V.K. Shrivatava
Judge

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Present:

Ms. Sharmila Singhai, learned counsel for the appellant.
Mr. Akhil Mishra, Panel Lawyer for the State.

J U D G M E N T

(Delivered on 13 /04/2006)

Per Vijay Kumar Shrivastava, J.

This appeal under Section 374(2) of the Code of Criminal Procedure is directed against the judgment of conviction and order of sentence dated 30/09/1999 passed by Sessions Judge, Sarguja, in Sessions Trial No. 273/98, whereby learned Sessions Judge, after holding the appellant guilty for committing offence punishable under Section 302 of the IPC, sentenced him to undergo imprisonment for life and to pay fine of Rs.1,000/-

(Rupees one thousand), in default of payment of fine to further undergo R.I. for six months.

2) Briefly stated the prosecution case is that on 28/071998 at about 9.30 p.m., appellant accompanied with his wife came to the house of Charku and asked him to give liquor. At the same time, deceased Bhakal who is younger brother of Charku came there. Charku gave them a bottle of liquor. Appellant, his wife and Bhakal consumed the liquor. Thereafter, appellant started uttering obscene words who was stopped by Cherku and deceased Bhakal. But, appellant did not stop uttering obscene words, therefore, Charku slapped him and deceased also assaulted him with a wooden stick. Appellant went to his house wherefrom he came back with an axe. Deceased Bhakal was standing in the courtyard. Appellant gave a heavy blow by the axe on the neck of deceased Bhakal who received grave injury and succumbed to it on the spot.

3) Charku on the same night went to the Police Station, Balrampur where he reported the matter. On his report merg intimation and first information were recorded and investigation took place. Investigating Officer Arvind Tiwari conducted the inquest of the deceased and sent the dead body for post mortem. Dr. N.K. Dutta, conducted the autopsy on the body of deceased Bhakal who describing external and internal injuries found on the dead body in his postmortem report, opined that the death was caused by shock due to cutting of main vessels of neck as a result of blow on the right side of neck. Death was homicidal in nature.

Investigating Officer has also prepared the spot map, collected control earth and blood stained earth. He also took the appellant into custody and on his discovery memorandum, recovered an axe and clothes that were worn by him at the time of the incident. Appellant was also examined by Dr. S.P. Bias, who found three superficial injuries; one abrasion over the right shoulder, one abrasion over forehead and one contusion over left upper arm. Statements of witnesses under Section 161 of the Cr.P.C., were recorded and the seized articles were sent to Forensic Science Laboratory. On examination, chemical examiner found presence of blood in blood stained earth, appellant's clothes, axe and underwear of the deceased. After completion of the investigation, challan under Section 302 of the I.P.C., was led in the Court of Judicial Magistrate, First Class, Ramanujganj, who committed the case to the Court of Sessions for trial.

3) Charge under Section 302 of the IPC was framed against the appellant and the same was read over and explained to him who abjured the guilt and pleaded that he is innocent and has been falsely implicated in the case. Learned trial Court, after close scrutiny of the evidence held death of deceased homicidal in nature and also held the appellant guilty for committing offence punishable under Sections 302 of the IPC and therefore, convicted and sentenced.

4) Death of deceased Bhakal is caused as a result of injury over his neck and his death was homicidal in nature, has not been disputed by the appellant. Even otherwise, from the

evidence of Dr. N.K. Dutta (PW/4) and autopsy report (Ex.P/5), it has been established that the following injuries were found on the body of deceased Bhakal who died as a result of shock due to cutting of main vessels of neck including Carotid on right side as a result of blow of sharp object on right side of his neck and the death was homicidal in nature.

> *"External injuries:*
> *Incised wound over the right side of the neck above to clavicle, size 3" x 2" & 2" deep cutting main vessels of right side of neck. Blood clots present. Injuries are ante-mortem in nature.*
> *Internal injuries:*
> *Cutting carotid artery and vein and some part of Trachea on right side of neck."*

5) Charku (PW/1) and Mst. Sampurni Bai (PW/2) are the eye-witnesses. Both of them have deposed in their statements that the appellant and his wife came and on being asked for liquor one bottle of liquor was provided to them. Appellant, his wife and deceased Bhakal consumed the liquor and thereafter appellant started quarreling and uttering obscene words. Charku slapped him and deceased also assaulted him with a stick. Appellant went to his house and came carrying an axe with him and by forceful blow wielded injury over the neck of deceased Bhakal. The axe was pierced in the neck of the deceased. Applicant removed the axe from the neck and fled away along with the axe from the scene of occurrence. Bhakal as a result of injury spontaneously succumbed to it. Oral evidence of Charku (PW/1) and Mst.. Sampurni Bai (PW/2) is corroborated by the first information report (Ex.P/1) duly proved by the witness Charku (PW/1)and

Arabind Tiwari, Investigating Officer (PW/5). The report has been lodged soon after the incident. Oral evidence is also supported by the medical evidence of Dr. N.K. Dutta and other evidence.

6) Ex.P/14 is a memorandum statement of the appellant. Ex.P/15 is a seizure memo vide which one Gamcha, one Banian and axe have been recovered at the instance of the appellant. Both these documents have been proved by Arvind Tiwari, Investigating Officer (PW/5).

From the evidence of Dr. N.K. Dutta (PW/4), it has also been established that the seized axe was sent for examination, who after examination, opined that the injuries found on the body of the deceased could have been caused by such weapon. From the evidence of Arvind Tiwari (PW/5), it has also been established that all the articles recovered and seized were sent for chemical examination vide Ex.P/19. Ex.P/20 is the report received from the Chemical examiner. From the report of chemical examiner, it is evident that the axe, towel and banian recovered from the appellant on his discovery statement were blood stained.

7) Oral evidence of Charku (PW/1) and Mst. Sampurni Bai (PW/2) does not suffer from any infirmity. Therefore, their statement duly supported by first information report, medical evidence and the circumstances of presence of blood in the clothes of the appellant seized from him and over axe is completely reliable, which proved that the injury over the neck of the deceased Bhakal has been caused by the appellant which resulted the death of deceased.

8) Learned counsel for the appellant relying on the judgments rendered by Hon'ble the Apex Court in ***Dattu Sharmraom Valake and another Vs. State of Maharashtra, reported in AIR 2005 SC 2331, Manke Ram Vs. State of Haryana, reported in AIR 2003 SC 4147, Bhera Vs. State of Rajasthan, reported (2000) 10 SCC 225 and Kunhayippu Vs. State of Kerala, reported in (2000) 10 SCC 307,*** contented that only one injury has been caused by the appellant who as a result of grave and sudden provocation in a spur of moment caused it. Therefore, his case falls within Section 304 Part II of the I.P.C. Per contra, learned Panel Lawyer for the State opposed the same contending that appellant carrying deadly weapon axe came from his own house and by taking the handle of the axe by both hands gave a heavy blow on the neck of the deceased as a result of which deceased received fatal injury over his neck and spontaneously died. Therefore, learned Court below properly appreciated the evidence and held the appellant to be guilty for intentionally causing the death of Bhakal.

9) All the aforesaid judgments relied upon by counsel for the appellant are distinguishable on facts of the present case. Here in the instant case, it is crystal clear that the appellant, his wife and deceased Bhakal all consumed liquor and thereafter appellant started abusing and uttering filthy words that was opposed by Charku (PW./1) despite that appellant continued abusing, therefore, Charku (PW/1) slapped him. Deceased Bhakal during intervention assaulted the appellant with a stick. From there appellant went to his house and came back to the house of Charku carrying deadly weapon axe in his hand. Deceased was

standing in the courtyard. Appellant gave severe blow with sharp edged deadly weapon axe by force on his neck. The sharp portion of the axe was pierced in his neck which cut thyroid carotid and main vessels of neck. Appellant not only left the axe in his neck, but removed it and taking the axe fled away from the spot. Deceased instantly succumbed to injuries.

10) Hon'ble the Supreme Court rendering judgment in ***State of Rajasthan Vs. Dhool Singh, reported in 2004 AIR SCW 24*** has observed at para 13 which reads as below.

> *"13. The number of injuries is irrelevant. It is not always the determining factor in ascertaining the intention. It is the nature of injury, the part of body where it is caused, the weapon used in causing such injury which are the indicators of the fact whether the respondent caused the death of the deceased within an intention of causing death or not. In the instant case it is true that the respondent had dealt one single blow with a sword which is a sharp-edged weapon measuring about 3 ft. in length on a vital part of body namely the neck. This act of the respondent though solitary in number had severed sternoclinoid muscle, external jugular vein, internal jugular vein and common carotid artery completely leading to almost instantaneous death. Any reasonable person with any stretch of imagination can come to the conclusion that such injury on such a vital part of the body with a sharp-edge weapon would cause death. Such an injury in our opinion not only exhibits the intention of the attacker in*

causing the death of the victim but also the knowledge of the attacker as to the likely consequence of such attack which could be none other than causing the death of the victim.

11) In the instant case also the facts are similar. Therefore, it can safely be inferred that the appellant with intent to cause death of the decease, attacked with an axe, inflicted a severe heavy blow on his neck to cause his death. Not only intention but also knowledge of the appellant was there as to the consequence of such attack which could be none other than causing the death of the deceased Bhakal was also crystal clear. Appellant who after consuming liquor started abusing and uttering filthy words was stopped by Charku and when the appellant did not control himself, he was slapped by Charku and also assaulted by deceased with a stick. Appellant received very minor superficial injury and went to his house from where he carrying an axe came to the house of Charku and seeing Bhakal standing in the Courtyard, assaulted with the axe on his neck. The blow was so severe that deceased instantaneously succumbed to injury on the spot. It is evident that the appellant did not attack the deceased as a result of grave and sudden provocation and in a spur of moment, but it was premeditated and planned. Even otherwise, the appellant taking undue advantage acted in a cruel and unusual manner.

12) From the aforesaid facts circumstance and the evidence, we are of the considered opinion that the death caused by the appellant does not fall in the category of offence of homicidal death not amounting to murder. Learned trial Court after close scrutiny of the evidence correctly held the appellant guilty for intentionally causing the death of Bhakal punishable under Section 302 of the IPC. The judgment of conviction and order of sentence passed by the Sessions Court does not suffer from any illegality or infirmity, therefore, the same is liable to be confirmed.

13) Before parting with the case, we would like to mention that whenever seized articles are sent to FSL for chemical examination and are received along with the report and produced in the Court, the appropriate procedure for admission of the report which has been prescribed under Rule 207 of the Rules and Orders (criminal) and Section 293 of the Cr.P.C., should invariably be followed instead of getting the report of chemical examiner exhibited by the evidence of Investigating Officer. Without proper admission of the document, its use to corroborate, the prosecution story if objected by accused may impair the story. Again, it has been noticed that to explain the circumstances brought against the accused by report of Chemical Examiner and Serologist proper opportunities are not afforded to the accused and the reports are used against the accused. Such practice is neither proper nor legal.

14) This fact should be brought to the notice of Sessions Judges and other Criminal Courts. Registrar General, High Court to take steps for the same with approval of Hon'ble the Chief Justice of this High Court.

15) In the result, the appeal fails and is dismissed.

Sd/-
V.K. Shrivatava
Judge

13/ 04/2006

Sd/-
Dhirendra Mishra
Judge

13/ 04/2006

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